

Entered on Docket

June 24, 2015

EDWARD J. EMMONS, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



IT IS SO ORDERED.
Signed June 24, 2015

Arthur S. Weissbrodt

Arthur S. Weissbrodt
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re]	Case No. 14-51560-ASW
ANDREW CURTIS WRIGHT,]	Chapter 7
Debtor.]	
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JOSEPH PADGETT,]	Adv. Pro. No. 14-05073-ASW
Plaintiff,]	
v.]	
ANDREW CURTIS WRIGHT,]	
Defendant.]	

**MEMORANDUM DECISION RE: MOTION FOR SUMMARY JUDGMENT AND
PLAINTIFF'S ATTORNEY'S FEES**

On March 31, 2015, this Court issued a Tentative Decision granting Plaintiff's Motion for Summary Judgment. Plaintiff is represented by attorney Hugo Torbet, and Defendant is pro se.

A hearing was held on April 24, 2015, and the Court took the matter under submission. The Court has carefully considered the arguments of the parties, and makes the Tentative Decision final. At the hearing, Mr. Wright argued that the District Court verdict

1 did not support a finding of willful and malicious conduct.
2 However, the Court finds that these arguments are addressed
3 sufficiently by the analysis at pages 6-9 of the Tentative
4 Decision.

5 In the Tentative Decision, the Court deferred ruling on Mr.
6 Torbet's fees until final time records were provided. Mr. Torbet
7 has provided those records, which the Court has now reviewed.

8 As noted in the Tentative Decision, this Court may award fees
9 incurred in prosecuting a nondischargeability claim under
10 § 523(a)(6) if Plaintiff could recover attorney's fees in a non-
11 bankruptcy court. In re Bertola, 317 B.R. 95, 99-100 (9th Cir. BAP
12 2004). Under 42 U.S.C. § 1988(b), the court may allow a prevailing
13 party in a 42 U.S.C. § 1983 action a reasonable attorney's fee in
14 any action or proceeding to enforce a provision of 42 U.S.C.
15 § 1983, including fees incurred in certain post-judgment
16 proceedings, Stewart v. Gates, 987 F.2d 1450, 1452-53 (9th Cir.
17 1993), including enforcement activity. Balark v. Curtin, 655 F.2d
18 798, 803 (7th Cir. 1981).

19 Mr. Torbet's declaration and billing statement indicates that
20 Mr. Torbet spent a total of 41 hours in both the main case and this
21 adversary proceeding at an hourly rate of \$375, for a total of
22 \$15,375.00. The Court finds that these fees are excessive.

23 The billing statement reflects that Mr. Torbet spent a total
24 of 17 hours (\$6,375) on services related to the summary judgment
25 motion, not including time spent at the hearing. Mr. Torbet's brief
26 in support of the summary judgment motion did not explicitly
27 analyze issue preclusion. Although the brief states that the jury
28 verdict establishes Mr. Wright's liability, it does not set forth

1 the law regarding issue preclusion or analyze the individual prongs
2 of that doctrine, which are critical to an analysis of that issue.

3 Additionally, the time entries for 7/20/14, and 8/6/14,
4 1/16/15, 3/6/15, and 3/31/15 (a total 12.5 hours) are clumped, so
5 that the Court cannot analyze how much time was spent on each
6 activity.

7 Most importantly, the principal amount at issue in this case
8 (other than attorney's fees) is \$10,001. Mr. Torbet's fee request
9 is more than 150% of this amount, which is excessive by any
10 measure.

11 For all of these reasons, the Court reduces the fees awarded
12 to Plaintiff's counsel by 50%, for a total compensation of
13 \$7,687.50.

14 Counsel for Plaintiff shall submit a proposed form of order
15 granting summary judgment and awarding fees in the amount of
16 \$7,687.50, for the reasons stated in this Memorandum Decision and
17 in the Tentative Decision issued March 31, 2015. Once that order
18 has been entered by the Court, the Court will consider the proposed
19 judgment submitted by Plaintiff's counsel on April 28, 2015.

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21 ***** END OF MEMORANDUM DECISION *****
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UNITED STATES BANKRUPTCY COURT
For The Northern District Of California

Court Service List

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